# In the Supreme Court of the United States

OCTOBER TERM, 1946

**No. 207**

EMORY S. LAND (Chairman, United States Maritime Commission), HOWARD L. VICKERY (Vice Chairman, United States Maritime Commission), et al.,

*Petitioners,*

vs.

R. STANLEY DOLLAR, DOLLAR STEAMSHIP LINE, THE J. HAROLD DOLLAR, PACIFIC STATES COMPANY, et al.,

*Respondents.*

## Respondents' Memorandum Relative to Petitioners' Motions to Substitute Defendants, Consenting in Part and Objecting in Part


GREGORY A. HARRISON,
111 Sutter Street,
San Francisco 4, California,

CLINTON M. HESTER,
1737 Shoreham Building,
Washington, D.C.,

*Attorneys for Respondents.*

MOSES LASKY,
111 Sutter Street,
San Francisco 4, California,

*Of Counsel.*


PARKER PRINTING COMPANY, 545 SANSOME STREET, SAN FRANCISCO

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vs.

R. STANLEY DOLLAR, DOLLAR STEAMSHIP LINE, THE J. HAROLD DOLLAR ESTATES COMPANY, et al.,

*Respondents.*

## Respondents' Memorandum Relative to Petitioners' Motions to Substitute Defendants, Consenting in Part and Objecting in Part

Upon filing their petition for a writ of certiorari the petitioners (defendants) also filed a motion to substitute W. W. Smith, present Chairman of the United States Maritime Commission, as defendant in place of defendant Land, former Chairman, who resigned from the Commission January 15, 1946, and to substitute Richard Parkhurst, a present member of the Commission, for defendant Howard L. Vickery, who died

March 21, 1946. On July 17, 1946, the petitioners filed a "Further Motion to Substitute," asking that Grenville Mellen, another new member of the Commission, be substituted for defendant Edward Macauley, who resigned from the Commission May 21, 1946.

So far as petitioners seek to substitute Richard Parkhurst for Howard L. Vickery, the respondents consent, since Vickery is now deceased, and respondents have no desire to pursue his estate.

So far as the petitioners seek to add W. W. Smith and Grenville Mellen as defendants, the respondents consent.

But so far as petitioners seek to eliminate defendants Land and Macauley as parties to the suit, the respondents object.

A motion by a plaintiff to substitute defendants is not uncommon. But a motion by a defendant to substitute another party in his place is extraordinary. This is an action against the defendants individually for commission of a tort to the damage and injury of the plaintiffs (see brief of respondents filed concurrently herewith in opposition to the petition for writ of certiorari, at p. 12). The relief to which the plaintiffs are entitled may include judgment for damages against the defendants. At a time when each of the defendants was a member of the Commission and had custody of plaintiffs' property, he refused to surrender the property on demand and thereby became guilty of conversion, and the fact that one has thereafter ceased to be a member of the Commission does not exonerate him from his personal liability for that wrong.

A defendant called on by proper process to answer a charge of wrongdoing may not cavalierly avoid answering by substituting in his place another as a sacrificial lamb. The personal liability of defendants Land and Macauley as individuals cannot be shifted to Smith and Mellen without the plaintiffs' consent. *Ex Parte La Prade*, 289 U.S. 444; *Gorham Manufacturing Co. v. Wendell*, 261 U.S. 1. It is immaterial that the parties sought to be brought in are themselves wrongdoers.

Moreover, the plaintiffs are entitled to take advantage of the fact that Land and Macauley are defendants by requiring them to answer interrogatories under Rule 33 of the *Rules of Civil Procedure* and to make admissions under Rule 36, and by taking their depositions and placing them on the witness stand as adverse parties under Rules 26(d) and 43(d).

W. W. Smith, Richard Parkhurst and Grenville Mellen, present members of the Commission, have made themselves liable to the plaintiffs and have committed wrongs identical with those charged in the complaint against the defendants, because they now have custody of the property claimed by the plaintiffs and refuse to surrender. By seeking substitution as defendants they admit their refusal to deliver and they adopt the attitude, and continue and threaten to continue the action, of their predecessors. They have therefore themselves become liable in their own capacity and may properly be made parties by addition. For that reason we consent that they be added as defendants, but we do object to the elimination of defendants Land and Macauley.

Respectfully submitted,

August 29, 1946.

GREGORY A. HARRISON,
CLINTON M. HESTER,
*Attorneys for Respondents.*

MOSES LASKY,
*Of Counsel.*